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MAR 27 1995

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

March 27, 1995

Mr. William P. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Comments for Consideration With CI Docket No. 95-6

Dear Mr. Caton:

Transmitted herewith, on behalf of WJG MariTEL Corporation, is an original and four (4) copies of Comments to be considered in the above-referenced proceeding: *In the Matter of the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines.*

If any questions should arise related to this matter, please contact the undersigned counsel.

Sincerely,



Susan H.R. Jones

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF SECRETARY

In the Matter of

the Commission's Forfeiture
Policy Statement and Amendment of
Section 1.80 of the Rules to Incorporate
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CI Docket No. 95-6

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Comments of

WJG MariTEL Corp.

WJG MariTEL Corporation ("MariTEL"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.415, hereby submits its comments in response to the Notice of Proposed Rulemaking ("NPRM") adopted in the above referenced proceeding. In the NPRM, the Commission seeks comment on its proposal to incorporate into Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, a Forfeiture Policy Statement¹ with standard guidelines for assessing FCC forfeitures.

Introduction

MariTEL is the largest provider of public coast station services in the United States. Its stations cover the Gulf of Mexico, the Southern Atlantic Coast, and U.S. inland waterways. MariTEL's present inland waterway network serves most areas from Baton Rouge, Louisiana to Chicago, Illinois. Its southern Atlantic system serves most major markets from Morehead City, North Carolina to the Florida Keys. The network consists of 67 transmit locations, each interconnected to one of three control switching offices located in Gulfport, Mississippi;

¹ The Commission's Forfeiture Policy Statement was adopted by the Commission, Policy Statement, Standards for Assessing Forfeitures, 6 FCC Rcd 4695 (1991) recon. denied, 7 FCC Rcd 5339 (1992), revised, 8 FCC Rcd 6215 (1993).

Memphis, Tennessee and Hollywood, Florida. Public coast stations, regulated under Part 80 of the Commission's Rules, provide interconnected common carrier public correspondence telecommunications and data services to sea-going vessels, barges and recreational boaters on frequencies designated for VHF maritime radio.

Public coast stations have traditionally been regulated by both what was the Private Radio Bureau (now the Wireless Telecommunications Bureau) and the Common Carrier Bureau as a hybrid service. Until recently, public coast stations were classified as "dominant" common carriers for purposes of the Title II requirements of the Communications Act of 1934, as amended ("the Act," or "Communications Act"). Pursuant to the Second Report and Order in the Docket 93-252 proceeding, which implemented the basic provisions of Sections 3(n) and 332 of the Communications Act pursuant to the Omnibus Budget Reconciliation Act of 1993,² however, public coast stations were reclassified as commercial mobile radio service ("CMRS") providers because they offer to a substantial portion of the public, a for-profit, radio service interconnected to the public switched telephone network ("PSTN").³

MariTEL fully supports the Commission's review and of its existing Forfeiture Policy Statement. However, MariTEL urges the FCC to revise the Forfeiture Policy Statement to more accurately reflect the Commission's present regulatory structure, the current marketplace, and to ensure a licensee's realistic abilities to pay. Accordingly, MariTEL is pleased to have this opportunity to submit the following comments in the proposed Forfeiture Policy Statement.

Comments

The NPRM seeks comment on the adoption of a schedule of standard forfeiture guidelines. Adopting such guidelines, the Commission proposes, would ensure "comparable

² Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392, 395 (1993).

³ Second Report and Order, *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, (Second Report and Order), GN Docket No. 93-252, 9 FCC Rcd 1411 (released March 7, 1994), paragraph 137.

treatment of similarly situated offenders .”⁴ The guideline, as proposed, designates three (3) categories of regulated entities with graded amounts of base forfeitures for each category: “Broadcast/Cable,” “Common Carrier,” and “Other.” MariTEL respectfully proposes that, in adopting the final policy statement in this proceeding, the Commission should clarify the proposed categories to accurately reflect recent regulatory restructuring of wireless service providers, and to ensure that small providers such as MariTEL are not subject to the same forfeitures as large, national wireline carriers.

1. The Three Categories of “Offenders” on the Proposed Forfeiture Policy Statement Does Not Accurately Reflect Recent Regulatory Reclassifications.

During recent regulatory proceedings, the Commission adopted regulations and regulatory reclassifications with wide-range implications for the wireless telecommunications industry. Specifically, the Commission created a comprehensive regulatory framework for all mobile service providers, classifying them in two categories for purposes of regulatory symmetry: commercial mobile radio service (“CMRS”) providers and private mobile radio service (“PMRS”) providers. In adopting such a regulatory structure, the Commission recognized that with new technologies, certain categories of mobile service providers, previously subject to regulations under traditional “private radio” and “common carrier” classifications, were, or would be competing in similar markets. Accordingly, under the Commission’s new regulatory framework, all substantially similar mobile service providers are subject to “regulatory parity.” For most purposes, CMRS providers are considered common carriers, although the FCC is determining whether to forbear from full Title II regulatory treatment for all CMRS providers.⁵ It is likely that many licensees who would have previously been considered “Other” for purposes of the old Forfeiture Policy Statement, are now considered common carriers. Accordingly,

⁴ NPRM, page 2.

⁵ Notice of Proposed Rule Making, In the Matter of Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers, GN Docket 94-33, 9 FCC Rcd 2164 (released May 4, 1994).

because of the regulatory restructuring, the categories of “Common Carrier” and “Other” are no longer relevant.

MariTEL therefore urges the Commission to revise its proposed Forfeiture Policy Statement to correspond with recent regulatory revisions, and to plainly state, using current nomenclature, the services subject to different forfeiture categories.

2. CMRS Providers Should Be Construed as “Other” for Purposes of Calculation of Base Forfeiture Amounts.

CMRS providers should be subject to the level of forfeiture of the “Other” category and should not be subject to the extraordinary forfeitures calculated for wireline local and long distance common carriers. In the series of rulemakings regarding regulatory symmetry and CMRS providers, the Commission frequently recognized that CMRS providers, other than cellular carriers, do not possess market power.⁶ Correspondingly, CMRS providers do not possess the market power, *and revenues*, to bear the burden of exorbitant forfeitures calculated for large common carriers. Accordingly, CMRS providers and wireline common carriers are not “similarly situated offenders”⁷ and should not be categorized together for purposes of assessing forfeitures.

Not only do CMRS providers lack market power in general, and thus should be treated differently from wireline carriers, but the Commission has frequently acknowledged public coast stations’ lack of market power in particular. In fact, public coast stations have recently *lost* significant market power due to competition from cellular providers, causing the Commission to note in one proceeding that “cellular radio offers increasingly competitive service that is supplanting the use of public coast stations.”⁸ Public coast station operators, as CMRS providers or as competitors in their industry, do not control enough market share to warrant classification

⁶ Second Report and Order, paragraph 137.

⁷ NPRM, page 2.

⁸ Notice of Proposed Rulemaking and Notice of Inquiry, In the Matter of Amendment of the Commission's Rules Concerning Maritime Communications (hereinafter “Amendment of Maritime Rules”), 7 FCC Rcd 7863, 7870, ¶ 35, (Pri.Rad.Bur. 1993).

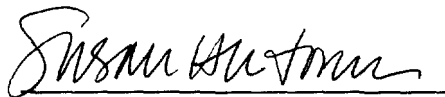
as a "Common Carrier" for purposes of forfeiture standards. Nor are they substantially similar to wireline carriers, upon which such large forfeitures may be appropriate. Accordingly, public coast stations should be included in the third category, however it is identified.

Conclusion

MariTEL generally supports the Commission's adoption of universal guidelines to ensure that the Commission assess forfeitures in a fair and uniform way. However, it urges the Commission to conform its Forfeiture Policy Statement to accurately reflect the new regulatory landscape, and to also ensure that CMRS providers in general and public coast stations in particular, are not subject to unreasonable forfeitures calculated for wireline common carriers.

WHEREFORE, THE PREMISES CONSIDERED, WJG MariTEL submits these Comments and urges the Commission to proceed in a manner consistent with the views expressed herein.

Respectfully submitted,



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